# Joseph Smith and the Development of Habeas Corpus in Nauvoo, 1841–44

*John S. Dinger*

> You speak of lawyers; I am a lawyer too, but the Almighty God has taught me the principle of law; and the true meaning and intent of the writ of Habeas Corpus is to defend the innocent, and investigate the subject. –Joseph Smith[1]

The Church of Jesus Christ of Latter-day Saints from its inception in 1830 to the present day has been involved in numerous legal controversies. In fact, legal troubles hounded Joseph Smith, the founder of Mormonism, even before the LDS Church's official organization because of his peculiar activities and religious beliefs. Usually when one thinks of legal controversy and the LDS Church, most often the topic that comes to mind is Mormon polygamy in

---

JOHN S. DINGER {john.dinger@yahoo.com} received his J.D. from the University of Utah S.J. Quinney College of Law. He is currently a prosecuting attorney in Boise, Idaho, and the editor of *The Nauvoo City and High Council Minutes* (Salt Lake City: Signature Books, forthcoming 2011). He thanks Professor John Tehranian at the Quinney College of Law who read an early version of this paper.

[1]Joseph Smith, June 30, 1843, *Journal of Discourses*, 26 vols. (London and Liverpool: LDS Booksellers Depot, 1854–86), 2:167.

the late nineteenth century and *Reynolds v. U.S.*[2] that was argued before the U.S. Supreme Court.

However, an often overlooked legal aspect of the LDS Church and one that affected its development—much like polygamy—are the habeas corpus acts passed by the Nauvoo City Council, with Joseph Smith as its mayor in the early 1840s. The Nauvoo City Council took an extremely expansive view of habeas corpus and enacted ordinances implementing that right to the degree that it infuriated non-Mormon neighbors in Illinois. In fact, the Nauvoo City Council habeas corpus laws were likely the most expansive version ever passed in the American or British legal systems.

Habeas corpus is a legal proceeding that originated in British common law, in which an individual being held in custody can contest the legality of the detainment. The prisoner, or someone on his or her behalf, may ask a court or an individual judge for a writ of habeas corpus. After the judge issues a writ for one of these reasons, the detained individual would be brought before the issuing judge to determine whether the hold was legal. This was usually done by determining whether the process of issuing an arrest warrant or extradition order was done correctly. In the 1840s, the writ was used in four ways:

(1) a prisoner sought relief from a criminal arrest or commitment; (2) a prisoner sought relief from a civil arrest or commitment; (3) an individual sought relief from some restraint on his or her liberty that did not arise from a civil or criminal arrest or commitment; and (4) a third party sought to have a prisoner released from the respondent's custody so that the third party could take custody.[3] The Mormons used writs of habeas corpus for the first, second, and fourth goals.

The habeas corpus acts passed in Nauvoo were so expansive that they allowed the Nauvoo Municipal Court to review not only the legality of the arresting writ but the underlying crime for which the arrest was made regardless of the state in which it happened. This provision allowed the Nauvoo Municipal Court to adjudicate all cases against Joseph Smith and other Mormons on their terms and by Mormon or Mormon-friendly judges. Such an application of the writ was usually viewed in one of two ways. Either it could be seen as an exam-

---

[2]98 U.S. 145 (1878).

[3]Dallin H. Oaks, "Habeas Corpus in the States—1776–1865," *University of Chicago Law Review* 32 (1965): 257.

ple of Mormons' disregard for the laws of the land, or it could be seen as the Mormons attempt to defend themselves against religiously biased individuals who observed no limits in their efforts to bring down Mormonism and its leaders.

What neither side apparently foresaw, was a transformation of a relatively powerless nineteenth-century habeas corpus writ into the "Great Writ" it eventually became in the mid-1950s.[4] In 1953, the U.S. Supreme Court found that federal courts could examine the constitutionality of state criminal convictions, greatly expanding the strength of writs of habeas corpus. This situation is similar to what happened in Nauvoo over a century earlier when the Nauvoo City Council declared that the Nauvoo Municipal Court could examine the legality of warrants, orders, and convictions originating in other jurisdictions. Thus, habeas corpus became a "Great Writ" long before most legal scholars believe it did.

The habeas corpus acts in Nauvoo protected the Mormons but simultaneously alienated them from their non-Mormon neighbors, with the result that this "protection," ironically, rather than shielding Joseph Smith, contributed directly to his death. Robert B. Flanders, a historian of the Nauvoo period, wrote: "The frequent inability of county and state law enforcement officers to arrest accused persons in Nauvoo aroused the opposition of the gentile citizens around the city. . . . The habeas corpus clause of the charter and the cavalier fashion in which the Mormons used it generated much popular fear and hatred, and were the points upon which legal attacks on the whole [city] charter finally focused. Smith's riddled body at Carthage jail and the dissolution of the city corporation marked the conclusion of the issue."[5]

One of the major complaints from non-Mormon neighbors and apostates was Smith's ability to avoid arrest by his use of writs of habeas corpus. Thus, an analysis of the passage and use of these acts is necessary to fully understand critical legal and political aspects of the Nauvoo experience. Though these acts were used by many people in Nauvoo, this paper focuses on Joseph Smith, as most of the acts were passed in response to his activities.

---

[4]*Brown v. Allen*, 344 U.S. 437 (1953); see also *Smith v. Bennett*, 365 U.S. 708 (1951).

[5]Robert B. Flanders, *Nauvoo: Kingdom on the Mississippi* (Urbana: University of Illinois Press, 1975), 99.

## THE NAUVOO CHARTER

The authority to pass habeas corpus acts came from the Nauvoo Charter. In early nineteenth-century Illinois, a city could not govern itself without being given that authority from the state legislature. Starting in 1837 with Chicago, the Illinois State Legislature began chartering cities under special acts passed by the general assembly.[6] At least eight cities and towns were also chartered, including Springville in early 1840.[7] The Springville charter is especially important in the history of Nauvoo, as the Nauvoo Charter is nearly an exact copy. In fact, Glen M. Leonard, who has written the most recent history of Nauvoo, observes: "More than 80 percent of its provisions closely followed franchises authorized for other Illinois cities."[8]

On December 16, 1840, the Illinois state legislature ratified the Nauvoo Charter, helping to set up the Mormon capital.[9] On October 4, 1840, John C. Bennett, a recent convert and confidante of Joseph Smith, had been appointed to assist Smith in writing the Nauvoo Charter and "urge the passage of said bill through the legislature."[10] Bennett had arrived in Nauvoo sometime in August or September of 1840 after offering his services to Joseph Smith through a series of letters.[11] In December 1840, Bennett lobbied the state legislature on behalf of the Church, gathering support for the charter from such prominent individuals as Stephen A. Douglas, then Secretary of State, and Sidney H. Douglas, a Whig senator and party leader.[12] Flanders describes its passage:

> On December 27 the Nauvoo charter bill was introduced in the

---

[6]Chicago was chartered on March 4, 1837. Richard E. Bennett and Rachel Cope, "'A City on a Hill': Chartering the City of Nauvoo," *John Whitmer Historical Journal* (2002) Nauvoo Conference Special Edition, 20.

[7]Springville was chartered on February 3, 1840. Ibid. The other cities include Ohio City in 1863, Chillicothel in 1838, Maumeel in 1838, Dayton in 1841, Alton in 1837, Galena in 1839, and Quincy in 1840.

[8]Glen M. Leonard, *Nauvoo: A Place of Peace, A People of Promise* (Salt Lake City: Deseret Book, 2002), 104–5.

[9]Bennett and Cope, "A City on a Hill," 21.

[10]Joseph Smith, et al., *History of the Church of Jesus Christ of Latter-day Saints,* edited by B. H. Roberts, 7 vols., 2d ed. rev. (Salt Lake City: Deseret Book, 1948 printing), 4:205.

[11]Flanders, *Nauvoo,* 95.

[12]Ibid., 95–96.

> Upper House by Senator Little, whose only comment was that it contained "an extraordinary militia clause" which he considered "harmless." Under a suspension of the rules, the bill was read the first and second times and referred to the Judiciary Committee; on December 5 it was reported back with an unspecified amendment; and on December 9 it was read the third time and passed, in company with other miscellaneous bills. In the House of Representatives, the procedure was similar. Introduced from the Senate on December 10 it was read twice by title and referred to committee; two days later it was reported back without amendment, read again by title, and shouted through without calling for ayes and nays. It next went to the Council of Revision, a review body with amending powers made up of Democratic Governor Thomas Carlin and the four supreme court Justices, three Whigs and one Democrat. This group passed it without change on December 18.[13]

Both political parties, the Whigs and the Democrats, viewed the Mormons as a potential boon to their power, as they were sure to vote as a bloc. Bennett seemed to have perceived and exploited this fact. Illinois Governor Thomas Ford later wrote, "He flattered both sides with the hope of Mormon favor and both sides expected to receive their votes."[14]

Though the Nauvoo Charter was very similar to other charters, particularly Springville's, it was different in three important ways. The Nauvoo Charter included the right to create a university,[15] a

---

[13]Ibid., 96.

[14]Thomas Ford, *History of Illinois from its Commencement as a State in 1818 to 1847 Containing a Full Account of the Black Hawk War, the Rise, Progress, and Fall of Mormonism, the Alton and Lovejoy Riots, and Other Important and Interesting Events* (Chicago: S. C. Griggs & Co., 1854), 264.

[15]Section 24 of the Nauvoo Charter allowed for the creation of a university. Other Illinois city charters allowed for the creation of "common schools," but none gave the authority to create a university. Bennett and Cope, "City on a Hill," 34. Section 24 of the Nauvoo Charter states: "Sec. 24. The City Council may establish and organize an institution of learning within the limits of the city, for the teaching of the Arts, Sciences, and Learned Professions, to be called the 'University of the City of Nauvoo,' which institution shall be under the control and management of a Board of Trustees, consisting of a Chancellor, Registrar, and twenty-three Regents,

standing army,[16] and a municipal court with unprecedented powers, especially the granting of writs of habeas corpus.[17] Only one other Illinois city, Alton, allowed its municipal court to grant habeas corpus

---

which Board shall thereafter be a body corporate and politic, with perpetual succession by the name of the 'Chancellor and Regents of the University of the City of Nauvoo,' and shall have full power to pass, ordain, establish, and execute, all such laws and ordinances as they may consider necessary for the welfare and prosperity of said University, its officers and students; provided that the said laws and ordinances shall not be repugnant to the Constitution of the United States, or of this State; and provided also, that the Trustees shall at all times be appointed by the City Council, and shall have all the powers and privileges for the advancement of the cause of education which appertain to the Trustees of any other College or University of this State."

[16]Section 25 of the Nauvoo Charter gave the authority to create the Nauvoo Legion, a standing army controlled by the leaders of Nauvoo: "Sec. 25. The City Council may organize the inhabitants of said city, subject to military duty, into a body of independent military men, to be called the 'Nauvoo Legion,' the Court Martial of which shall be composed of the commissioned officers of said Legion, and constitute the law-making department, with full power and authority to make, ordain, establish, and execute all such laws and ordinances as may be considered necessary for the benefit, government, and regulation of said Legion; provided said Court Martial shall pass no law or act, repugnant to, or inconsistent with, the Constitution of the United States, or of this State; and provided also that the officers of the Legion shall be commissioned by the Governor of the State. The said Legion shall perform the same amount of military duty as is now or may be hereafter required of the regular militia of the State, and shall be at the disposal of the Mayor in executing the laws and ordinances of the city corporation, and the laws of the State, and at the disposal of the Governor for the public defense, and the execution of the laws of the State or of the United States, and shall be entitled to their proportion of the public arms; and provided also, that said Legion shall be exempt from all other military duty."

[17]The Nauvoo Charter, Section 17, reads: "The Mayor shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry such ordinances into execution and effect; appeals may be had from any decision or judgment of said Mayor or Aldermen, arising under the city ordinances, to the Municipal Court, under such regulations as may be presented by ordinance; which court shall be composed of the Mayor as Chief Justice, and the

by amending its city charter on June 1, 1839. Only two months later, however, Alton's citizens voted to eliminate its Alton municipal court, thus leaving the Nauvoo Charter as uniquely granting the power to its municipal court for writs of habeas corpus.[18] The charter was specifically created to be broad and powerful. Smith wrote, "The City Charter of Nauvoo is my own plan and device; I concocted it for the salvation of the Church, and on principles so broad, that every honest man might dwell secure under its protective influence without distinction of sect or party."[19]

With the passage of the Nauvoo Charter, the city was then allowed to set up a government and elect a mayor, counselors, and alderman. When this was done, these officers were able to pass laws and ordinances for the governing of the people of Nauvoo. Acting under the Nauvoo Charter's authority, the Nauvoo City Council passed many laws from the mundane to the very creative—but arguably, the habeas corpus acts were the most interesting.

## THE HABEAS CORPUS ACTS

Though the municipal court of Nauvoo had the authority to pass acts dealing with habeas corpus in December 1840, it did not exercise that authority until July 1842. Between that date and December 1843, the municipal court passed six habeas corpus acts, all designed with the specific purpose of protecting Joseph Smith from arrest and extradition. Each new act broadened and increased the powers of habeas corpus. A discussion of the six acts and the context for their passage follows.

---

Aldermen as Associate Justices, and from the final judgment of the Municipal Court to the Circuit Court of Hancock county, in the same manner [that] appeals are taken from judgments of the Justices of the Peace; provided that the parties litigant shall have a right to a trial by a jury of twelve men in all cases before the Municipal Court. The Municipal Court shall have power to grant writs of habeas corpus in all cases arising under the ordinances of the City Council."

[18]Bennett and Cope, "A City on a Hill," 35; see also James L. Kimball Jr., "The Nauvoo Charter: A Reinterpretation," in *Kingdom on the Mississippi Revisited,* edited by Roger D. Launius and John E. Hallwas (Urbana: University of Illinois Press, 1996), 43.

[19]*History of the Church,* 4:249; emphasis mine.

*June 4–11 1841: First Use of the Habeas Corpus*

On June 4, 1841, Joseph Smith paid Governor Thomas Carlin a visit at his home in Quincy, Illinois, approximately fifty miles from Nauvoo. While Smith's reason for the visit is unknown, it is known that Carlin did not tell Smith that he had recently received a demand from Thomas Reynolds, the governor of Missouri to extradite "Joseph Smith, Jun., Sidney Rigdon, Lyman Wight, Parley P. Pratt, Caleb Baldwin, and Alanson Brown, as fugitives from justice."[20] These charges, contained in an indictment that accompanied the demand from Governor Reynolds, stemmed from the escape of these men (there is considerable evidence that they were allowed–and even assisted–to escape) after varying periods of imprisonment during the winter of 1838–39 when the rest of the Mormons were forcibly driven from the state. After Smith left Carlin, the governor sent "Thomas King, Sheriff of Adams county, Thomas Jasper, a constable of Quincy, and some others as a posse, with an officer from Missouri, to arrest [Smith] and deliver [him] up to the authorities of Missouri."[21]

The following day, June 5, the posse overtook Smith at a hotel in Bear Creek, Illinois, a city about twenty-eight miles south of Nauvoo, and brought him back to Quincy. There he was presented to a master in chancery—a clerk invested with the power to execute orders of the courts—for Adams County, from whom he obtained a writ of habeas corpus. It is unknown how Smith learned that this writ could prevent his extradition to Missouri, though he stated: "Judge Stephen A. Douglas happen[ed] to [be in] Quincy that evening [and] appointed to give a hearing on the writ on the Tuesday following, in Monmouth, Warren county, where the court would then commence a regular term."[22] Douglas, though not a Mormon, was very friendly to Mormons and had been instrumental is the passage of the Nauvoo Charter.[23] It is likely then, that he provided Smith with legal advice and obtaining the writ of habeas corpus.

News of Smith's arrest reached Nauvoo; and on June 6, a group of Mormons came down the river to Quincy to overtake the posse and

---

[20]*Times and Seasons* 1, no. 11 (September 15, 1840): 169–70.

[21]*History of the Church*, 4:364.

[22]Ibid., 4:365.

[23]Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 1988), 94.

rescue Smith. Smith, traveling by road, arrived at Nauvoo the same day while still in the charge of King and Jasper. The following day, June 7, Smith, King, Jasper, and a group of twenty of Joseph's supporters set out for Monmouth for the hearing on the writ of habeas corpus before Judge Douglas because he was considered fair and was relatively close by. The party arrived on June 8, and Douglas agreed to hear the case the next day.

The June 9 trial, by all accounts, was something of a circus. Illinois was represented by Thomas Morrison, who was ill prepared, since he had not had sufficient notice of trial or even seen the charges levied against Joseph Smith in an indictment issued in Missouri. Douglas ordered the case to proceed regardless. When Charles A. Warren, Smith's counsel, called witnesses, Morrison objected, claiming Warren was speaking to the merits of the writ of habeas corpus and could only speak about the indictment or charges that the demand was based on, which he had not seen. A lengthy discussion ensued, taking up the rest of the day.[24]

Later that night the court reconvened but seemed to focus less on the indictment and more on stirring up emotion. Two attorneys, Messrs. Knowlton and Jennings, tried "to excite the public mind still more on the subject [of Joseph Smith] and inflame the passions of the people against [the Mormon] religion." Cyrus Browning, Joseph Smith's other attorney, countered by reciting equally emotional stories of the persecutions: "Mr. Browning resumed his pleadings which were powerful and . . . gave a recitation of what he himself had seen at Quincy, and on the banks of the Mississippi river when the Saints were 'exterminated from Missouri,' where he tracked the persecuted women and children by their bloody footmarks in the snow."[25]

On June 10, the court reconvened for Douglas's decision. Eschewing the sensational arguments, Douglas ruled on the substantive issues of the writ:

> That the writ being once returned to the Executive by the sheriff of Hancock county was dead, and stood in the same relationship as any other writ which might issue from the Circuit Court, and consequently the defendant could not be held in custody on that writ. The

[24]Richard Lyman Bushman, *Joseph Smith: Rough Stone Rolling* (New York: Alfred A. Knopf 2005), 426. See also *History of the Church*, 4:368.

[25]*History of the Church,* 3:69–70.

> other point, whether evidence in the case was admissible or not, he would not at that time decide, as it involved great and important considerations relative to the future conduct of the different states. There being no precedent, as far as they had access to authorities to guide them, but he would endeavor to examine the subject, and avail himself of all the authorities which could be obtained on the subject, before he would decide that point. But on the other, the defendant must be liberated.[26]

In essence, he ruled that for Missouri to arrest and extradite an individual, it must issue a new writ and not use a previously unused returned writ. (A returned writ has, basically, expired, since it was not served on the intended party before being returned by the issuing judge or governor.)

This trial is very important in the development of habeas corpus in Nauvoo, even though it did not involve a Nauvoo-issued writ. It showed the Mormons that they had a powerful legal device at their disposal which they could use to thwart their enemies using the legal system, something they had never been able to do before. Because of this introduction to habeas corpus, a year later the Nauvoo City Council passed the first of its stronger and more expansive versions in Nauvoo.

*July 5, 1842: First Nauvoo Ordinance*

After the 1841 trial in Monmouth, risk of Smith's being extradited was not high. In May 1842, however, Joseph Smith was blamed as an accessory in the attempted assassination of Lilburn H. Boggs, who, as Missouri governor, had authorized the violent expulsion of the Mormons from his state. Furthermore, beginning that same month, Smith had a falling out with John C. Bennett, assistant president of the Church and mayor of Nauvoo. On May 17, Bennett resigned as mayor, and the city council on May 19 unanimously accepted his resignation.[27] The council then resolved to "tender a Vote of Thanks to Gen[era]l John C. Bennett, for his great Zeal in having good & wholesome Laws adopted for the Government of this City, & for the faithful discharge of his Duty while Mayor of the same."[28]

Despite this public gesture of good will, the fact that Bennett

---

[26]Ibid., 4:370.

[27]Nauvoo City Council, Minutes, May 19, 1842. All quotations from these minutes are from the typescript copy in my possession.

[28]Ibid.

had resigned amid allegations of "illicit intercourse with women"[29] rapidly became public knowledge. Bennett believed and taught that worthy couples, married or not, could engage freely in sexual activity provided they kept their conduct a secret. Rumors were rampant in Nauvoo that Joseph Smith taught and authorized this practice. Although the exact origin of the rumors is unknown, Bennett certainly had an interest in propagating them and Joseph had, in fact, entered into a number of plural marriages by this time.[30] As part of his resignation, Bennett signed an affidavit stating that "he never knew the said Smith to countenance any improper conduct whatever either in public or private; and that he never did teach to me in private that an illegal illicit intercourse with females was under any circumstances, justifiable; and that I never knew him to so teach others."[31] This denial was, of course, also a confirmation, even though it technically exonerated Joseph Smith.

Furthermore, although Bennett claimed that he wished to repent and regain the trust of the Saints, the situation turned ugly. In mid-June 1842, Smith went public with his allegations of Bennett's sexual impropriety; and Bennett, after a failed (and possibly staged)

---

[29]Chauncey L. Higbee, Affidavit, May 17, 1842, printed in *Affidavits Contained in John C. Bennett's Letters* (Nauvoo: n.pub., August 31, 1842).

[30]Richard Van Wagoner, *Mormon Polygamy: A History* (Salt Lake City: Signature Books, 1986), 21–24. See also George D. Smith, "Nauvoo Roots of Mormon Polygamy, 1841–1846: A Preliminary Demographic Report," *Dialogue: A Journal of Mormon Thought* 27, no. 1 (Spring 1994): 13, which lists at least six plural marriages that Smith had entered into by May 1842: Louisa Beaman on April 5, 1841, Zina Diantha Huntington Jacobs on October 27, 1841, Prescendia Lathrop Huntington Buell on December 11, 1841, Mary Elizabeth Rollins Lightner on January 17, 1842, Patty Bartlett Sessions on March 9, 1842, and Marinda Nancy Johnson Hyde in April 1842. See also George D. Smith, *Nauvoo Polygamy: "... but we called it celestial marriage"* (Salt Lake City: Signature Books 2008), 621, which adds Agnes Moulton Cool- brith on January 6, 1842, Lucinda Pendleton Morgan Harris on January 17, 1842, Sylvia Porter Sessions Lyon on February 8, 1842, Sarah M. Kingsley Howe Cleveland in March 1842, and Elizabeth Davis Brackenbury Durfee in March 1842.

[31]Joseph Smith, "To the Church of Jesus Christ of Latter Day Saints, and to All the Honorable Part of the Community," *Times and Seasons* 3, no. 17 (July 1, 1842): 840–41.

suicide attempt, angrily left Nauvoo a few days later. On July 8, 1842, the *Sangamo Journal* of Springville, published a letter from Bennett dated June 27, promising to declare all that he knew about what occurred in Nauvoo. In the ensuing letters, Bennett made claims about the practice of polygamy and, most important, accused Joseph of authorizing the attempted Boggs assassination. He stated in an affidavit sworn on July 2, 1842, and later published in the *Sangamo Journal* under the headline: "The Fulfillment of Prophecy": "In 1841, Joe Smith predicted or prophesied in a public congregation in Nauvoo, that Lilburn W Boggs, ex-Governor of Missouri, should die by violent hands within one year. From one or two months prior to the attempted assassination of Gov. Boggs, Mr. O. P. Rockwell left Nauvoo for parts unknown to the citizens at large. I was then on terms of close intimacy with Joe Smith, and asked him where Rockwell had gone? Gone, said he, 'GONE TO FULFILL PROPHECY!'"[32] In later letters to the *Sangamo Journal*, Bennett repeated his allegations of Smith's involvement in the assassination attempt.[33]

Thus, during May, June, and July 1842, Joseph Smith and the city council had reason to believe that Missouri might again try to extradite Smith and other Mormon leaders. To head off any attempts, the council passed "An Ordinance in Relation to Writs of Habeas Corpus" on July 5, only three days after Bennett's accusatory letter was published. This act of habeas corpus was very expansive, but the minutes record no debate or discussion about the ordinance. Rather, the minutes simply record the language of the ordinance and record the unanimous vote that passed it.

> Sec. 1. Be it, and it is hereby Ordained by the City Council of the City of Nauvoo, that no Citizen of this City shall be taken out of the City by any Writs, without the privilege of investigation before the Municipal Court, and the benefit of a Writ of Habeas Corpus, as granted in the seventeenth Section of the Charter of this City. Be it understood that this Ordinance is enacted for the protection of the

[32]"Further Mormon Developments!! 2d Letter from Gen. Bennett," *Sangamo Journal* 10, no. 47 (July 15, 1842).

[33]Ibid., 10, no. 48 (July 22, 1842); see also "The Mormon Plot and League," 10, no. 46 (July 8, 1842); "Gen. Bennett's 4th Letter," 10, no. 48 (July 22, 1842); "5th Letter from Gen. Bennett," 10, no. 52 (August 19, 1842); "6th Letter from Gen. Bennett," 10, no. 52 (August 19, 1842); 11, no. 2 (September 2, 1842). All-capital headlines standardized from this point.

Citizens of this City, that they may in all Cases have the Right of Trial in this City, and not be subjected to illegal Process by their Enemies.

Sec. 2. This Ordinance to take effect, and be in force, from and after its passage.

Passed July 5th 1842.
Joseph Smith, Mayor.
James Sloan, Recorder.[34]

This ordinance was the first of six that greatly expanded the use of habeas corpus in Nauvoo, particularly in two ways. First, extradition or the use of any writ on a citizen of Nauvoo was not possible without first receiving a hearing before the municipal court. Thus, the municipal court had the authority to stop the extradition or arrest of any Nauvoo citizen. Second, the ordinance declared that, regardless of where a writ was issued or where an offense was committed, Nauvoo's municipal court had the right to try that case. Eventually, the city council ultimately declared that only the municipal court had jurisdiction over any crime allegedly committed by a citizen of Nauvoo.

This ordinance was first used only a month later when Smith was again arrested, this time for the attempted assassination of Boggs.

*August 8, 1842: Second Ordinance*

In the afternoon of August 8, 1842, the deputy sheriff of Adams County, Illinois, and two assistants arrested Joseph Smith for "being an accessory before the fact, to an assault with intent to kill made by one Orrin P. Rockwell on Lilburn W. Boggs, on the night of the sixth of May, A.D. 1842."[35] Thomas Carlin, governor of Illinois, issued the warrant for his arrest based on a request from Governor Thomas Reynolds of Missouri. Rockwell, the alleged assassin, was also arrested at this time.[36]

Although Smith and Rockwell submitted to arrest, the Nauvoo Municipal Court promptly convened and, within hours of learning of the arrest, had issued a writ of habeas corpus pursuant to the Illinois

---

[34]Nauvoo City Council, Minutes, July 5, 1842.

[35]*History of the Church*, 5:86.

[36]In March 1842, after these particular legal maneuverings, Rockwell was arrested in St. Louis, tried, acquitted, rearrested, and then released. He was never found guilty of the attempted assassination.

Constitution.[37] This writ of habeas corpus demanded that Smith and Rockwell be brought before the municipal court where, according to the July 5 ordinance, they would have the "Right of Trial." William Clayton, Smith's clerk, recorded in Smith's journal the dubious response by the deputy sheriff of Adams County and his assistants: "The Deputy Sheriff hesitated complying with the writ of Habeus Corpus for some time on the ground (as he said) of not knowing wether this city had authority to issue such writ but after much consultation on the subject they [the Deputy Sheriff and his assistants] finally agreed to leave the prisoners in the hands of the city marshall and returned to Quincy to acertain from the Governor wether our charter gave the city jurisdiction over the case."[38] The arresting posse then left Nauvoo, while Smith "and Rockwell went about our business."[39]

Compilers of the *History of the Church* would later list three reasons that Smith's arrest had been illegal. First, they claimed, "An accessory to an assault with intent to kill does not come under the provision of the fugitive act, when the person charged has not been out of Illinois." Basically, they were saying that, since Smith never left the state of Illinois, the fugitive act, a 1780 compact between states that authorized the transport of interstate criminals, could not apply. Second, "an accessory before the fact to manslaughter is something of an anomaly." Manslaughter is generally defined as killing a person without deliberation, planning, or premeditation. Thus, one could not be an accessory before the fact to an unplanned event. Third, "the [Illinois] constitution says, 'that no person shall be liable to be transported out of the state, for an offense committed within the same.'"[40] Thus, it was claimed that Smith could not be transported to Missouri for a crime (the ordering of an assassination) he allegedly committed in Illinois. Though these claims have possible merit, they

---

[37]Ibid., 5:87. The municipal court cited Article VIII Sec. 13 of the Illinois Constitution (1818) which states: "All persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it."

[38]Dean C. Jessee, *The Papers of Joseph Smith, Vol. 2: Journal, 1832–1842* (Salt Lake City: Deseret Book, 1989), 402–3.

[39]Ibid.

[40]*History of the Church*, 5:87.

were never adjudicated as the Adams County sheriff was not able to re-arrest Smith.

The city council, however, did not wait to see what Governor Carlin told the sheriff about his jurisdiction. That very afternoon, Hyrum Smith, Joseph's brother and the vice mayor, convened the city council, which passed another, more expansive ordinance dealing with habeas corpus.[41] The minutes again do not record any discussion or identify who provided legal advice. This ordinance contained four sections, the first of which reads:

> Be it Ordained by the City Council of the City of Nauvoo, that in all cases, where any Person or Persons, shall at any time hereafter, be arrested or under arrest in this city, under any Writ or process, and shall be brought before the Municipal Court of this City, by virtue of a Writ of Habeas Corpus, the Court shall in every such Case have power and authority, and are hereby required to examine into the Origin, validity, & legality of the Writ of Process, under which such arrest was made, & if it shall appear to the Court, upon sufficient testimony, that said Writ or Process was illegal, or not legally issued, or did not proceed from proper Authority. then the Court shall discharge the Prisoner from under ^said^ arrest, but if it shall appear to the Court that said Writ or Process had issued from proper Authority, and was a legal Process, the Court shall then proceed and fully hear the merits of the case, upon which such Arrest was made, upon such evidence as may be produced and sworn before said Court, & shall have power to adjourn the hearing, and also issue process from time to time, in their discretion, in Order to procure the attendance of Witnesses, so that a fair & impartial trial, & decision may be obtained, in every such case.[42]

This section gave the Nauvoo Municipal Court sweeping powers: (1) authority to examine the process by which a writ, like an arrest warrant or extradition order, was issued. (2) If the court determined that the correct process had not been followed, it could void the writ. This provision clarified the court's means for attacking a writ: first, the process by which it was issued; and second, whether the underlying crime on which the writ was issued constituted a sufficient reason for issuing the writ.

The second section states: "And be it further Ordained, that if upon investigation it shall be proven before the Municipal Court, that

---

[41]Nauvoo City Council, Minutes, August 8, 1842.

[42]Ibid.

the Writ or Process has been issued either through private pique, malicious intent, religious or other persecution, falsehood, or misrepresentation, contrary to the constitution of this State, or the constitution of the United States, the said Writ or Process shall be quashed, & considered of no force or effect, & the Prisoner or Prisoners shall be released & discharged therefrom."[43] This section of the new ordinance also greatly expanded the municipal court's authority to void writs against Church leaders. I am aware of no other court that invalidates a writ issued for "malicious intent" or "religious . . . persecution." Since most Mormons firmly believed that arrest warrants and extradition orders regarding Joseph Smith were based on religious persecution, this power granted to the city court was as much a faith act as a legal one.[44]

The third section states: "And be it also further Ordained, that in the absence, sickness, debility, or other circumstances disqualifying or preventing the Mayor, from Officiating in his office, as Chief Justice of the Municipal Court, the Aldermen present shall appoint one from amongst them, to act as chief Justice, or president pro tempore."[45] This section enabled the municipal court to continue to function if Joseph Smith—who was both Nauvoo's mayor and chief justice—was arrested or in hiding. On August 8, 1842, Hyrum Smith filled both roles—presiding over the city council and also the municipal court. On other occasions, other city council members would act as chief justice.

The fourth section simply put the ordinance into effect immediately, so that, by the time the Adams County sheriff returned, Smith and Rockwell would have added protection.[46]

In the following days, Smith, being worried about this threat to his safety, sought advice about the legality of his arrest from Judge

---

[43]Ibid.

[44]In regard to his arrest, Smith stated, "It is absolutely certain that the whole business is another glaring instance of the effects of prejudice against me as a religious teacher, and that it proceeds from a persecuting spirit, the parties have signified their determination to have me taken to Missouri, whether by legal or illegal means." *History of the Church*, 5:90. Based on Smith's statement, the new ordinance would allow the court to invalidate the writ.

[45]Nauvoo City Council, Minutes, August 8, 1842.

[46]Ibid.

James H. Ralston of Quincy and an attorney surnamed Powers of Adams County, while he moved about the city, out of public view and avoiding his home. On August 10, the deputy sheriff returned and, according to Mormon sources, "endeavored to alarm [Smith's] wife and the brethren with his threats, if [Smith] was not forthcoming."[47] On this same day, Smith escaped from Nauvoo and hid on a small island nearby in the Mississippi River. He stayed in touch with events in the city through messengers and friends. On August 11, he heard rumors that law enforcement officers from Lee County, Illinois, had joined in searching for him and that Iowa's governor had also issued a warrant for Smith and Rockwell if they tried to escape into that state.

Because of this experience, Smith essentially stayed in hiding until early November 1842, after two new habeas corpus ordinances were passed.[48] The second of these new ordinances made Smith feel secure enough to return to public life in Nauvoo.

*September 9, 1842: Third Ordinance*

On September 9, 1842, the city council, led by George W. Harris, a city alderman, passed its third ordinance dealing with habeas corpus. It stated:

> Sec. 1. Be it, and it is hereby Ordained by the City Council of the City of Nauvoo, that the Municipal Court, in issuing Writs of Habeas Corpus, may make the same returnable forthwith.
>
> Sec. 2. This Ordinance to take effect, and be in force from and after its passage.[49]

Certain legal writs, such as arrest warrants and requisitions of extradition, must be returned to the issuing judge by a certain date to keep them from expiring. The wording of this ordinance is vague; but apparently, by using "may," the city council gave the court discretion in requiring service before a specified expiration date on writs of habeas corpus. The minutes do not list any debate or discussion on the passage of this ordinance, leaving the context unclear. No attempts

---

[47]Ibid.

[48]Though Smith was in hiding, he still made occasional public appearances in Nauvoo. For example, he spoke at a special conference in Nauvoo on August 29 and to the Relief Society on August 31, 1842. *History of the Church*, 5:136, 139.

[49]Nauvoo City Council Minutes, April 15, 1843.

were made to arrest Smith or any other Mormon leaders near September 9. In short, whatever the intent of the ordinance, it did nothing to alleviate Smith's fears, and he stayed in hiding.

*November 14, 1842: Fourth Ordinance*

On November 7–12, 1842, the Nauvoo City Council met in Joseph Smith's home and worked on a fourth habeas corpus ordinance which would allow him to return to public life. Apostle Wilford Woodruff, who was also an alderman, recorded, "We spent several days in the city Council passing a law relative to writ of Habus Corpus. After it was passed Joseph felt secure to stay at home as the law protected him as well as all other citizens."[50] Again, the minutes do not record the discussion, so attempts to reconstruct the participants' understanding of the law or how they envisioned the threat to Joseph Smith is conjectural. Apparently the group spent these five days working through the conceptual problems and drafting the ordinance, for it was not actually passed until two days later on November 14. Reasons for the delay remain ambiguous. At nineteen sections, it was definitely the most comprehensive act passed to that point in Nauvoo on habeas corpus; and the city council obviously began with the text of the previous three ordinances before them, since this fourth ordinance repeats, at least in part, the earlier language or adds more explanation to existing clauses.

Section 1 sets out an arrested individual's right to the writ of habeas corpus: "Be it ordained by the city council of the city of Nauvoo, that if any person or persons shall be or stand committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him, her, or them to apply to the municipal court, when in session, or to the clerk thereof in vacation, for a writ of habeas corpus.... The said Court or Clerk to whom the application shall be made shall forthwith award the said Writ of Habeas Corpus."[51] This section did not alter the right itself significantly but it explains in greater detail the steps for obtaining a writ. A process that needed to be followed.

---

[50]Scott G. Kenney, ed., *Wilford Woodruff's Journal, 1833–1898,* typescript, 9 vols. (Midvale, Utah: Signature Books, 1983–85), November 7–12, 1842, 2:191.

[51]Nauvoo City Council, Minutes, November 14, 1842. These minutes are the source for the quotations of the ordinance that follow. Strikeovers are silently omitted.

Significantly, it also specifies that, as soon as a writ was issued, the detainee should be brought "before the Municipal Court of said City."

The second section adds penalties to the August 8, 1842, ordinance which prohibited fraudulent, harassing, or persecuting writs: "Any officer, person, or persons knowing that he, or they, have an illegal Writ, or not having any Writ, who shall attempt through any false pretext to take or intimidate any of the inhabitants of this City, through such pretext, shall forfeit for every such offence a sum not exceeding One thousand Dollars, nor less than five hundred Dollars, or in case of failure to pay such forfeiture, to be imprisoned not more than twelve Months nor less than six Months." I have found no evidence that these sanctions were ever imposed, but their potential in hampering law officers outside Nauvoo from attempting to arrest Nauvoo citizens is obvious.

Section 3 states that all hearings under an issued writ of habeas corpus must occur within five days of the writ's return. At the hearing the "Prisoner or Prisoners may deny any of the material facts set forth in the return, or may alledge any fact to shew, either that the imprisonment or detention is unlawful." Further the "Court shall proceed in a summary way to settle the said facts, by hearing the testimony & arguments, as well of all Parties interested civilly, if any there be, as of the Prisoner or Prisoners, & the Person or Persons who holds him, her, or them in custody, & shall dispose of the Prisoner or Prisoners as the case may require." This section in essence spells out the procedure one must follow to challenge his or her detainment. If this process shows that the writ was legally constituted, Section 3 lists exceptions that may still allow a prisoner to be discharged.[52]

Section 6 prohibits the municipal court from issuing a second writ in cases where it is clear the detainee is guilty: "It shall not be law-

[52]These exceptions are: "First, where the Court has exceeded the limits of its Jurisdiction, either as to the matter, place, sum, Person or Persons; Second, where though the original imprisonment was lawful, yet by some Act, omission or event which has subsequently taken place, the party has become entitled to his, her, or their discharge; Third, where the process is defective in some substantial form required by law; Fourth, where the process though in proper form has been issued in a case, or under circumstances where the law does not allow Process, or orders for imprisonment or arrest, to issue; Fifth, where, although in proper form, the process has been issued or executed by a Person or Persons, either <un>Authorized to issue or exe-

ful for the Municipal Court on a second Writ of Habeas Corpus obtained by such Prisoner or Prisoners to discharge the said Prisoner or Prisoners if he, she or they are proven guilty of the charges clearly & specifically charged in the Warrant of Commitment with a criminal offence."

Section 7 passed a type of double jeopardy protecting individuals whom the municipal court had discharged: "No Person or Persons Who have been discharged by Order of the Municipal Court on a habeas Corpus, shall be again imprisoned, restrained, or kept in custody for the same cause." This section would basically end all arrests of Smith and Rockwell on grounds related to the Boggs attempted assassination. Although this section seems entirely pro-Nauvoo, the section provides three exceptions allowing a discharged prisoner to be retried. First, in a criminal case, if prisoners were discharged because of a "defect of proof" but more evidence was discovered, then the "Prisoners should be again arrested upon sufficient proof & committed by legal process, for the same offence." Second, in a civil suit, if the prisoner was "discharged for any illegality in the judgment or Process," he or she could "afterwards [be] imprisoned by legal process, for the same cause of Action." And lastly, if the discharge was caused by "the nonobservance of any of the forms required by law," then the prisoner could be detained a second time if "the forms required by law [are eventually] observed." Basically, this section recognizes that being released on a technicality is not the same thing as innocence and that the underlying substantive charges could allow for re-arrest

---

cute the same, or where the Person or Persons having the custody of the Prisoner or Prisoners under such Process is not the person or Persons empowered by law to detain him, her, or them; Sixth, where the process appears to have been obtained by false pretence or bribery; Seventh, where there is no general law, nor any judgment, order, or decree of a Court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding. In all cases where the imprisonment is for a criminal or supposed criminal matter, if it shall appear to the said Court that there is sufficient legal cause for the commitment of the Prisoner or Prisoners, although such commitment may have been informally made, or without due authority, or the process may have been executed by a Person or Persons not duly authorized, the Court shall make a new commitment, in proper form, & directed to the proper Officer or Officers, or admit the party to Bail, if the case be bailable.

with the technical forms being properly observed.

Section 11 imposes penalties on any "Officer, Sheriff, Jailor, keeper, or other Person" upon whom a writ is served who refuses to "make the returns as aforesaid, or to bring the Body of the Prisoner or Prisoners according to the command of the said Writ, within the time required by this Ordinance." An officer refusing to produce the prisoner will be "committed to the City or county Jail . . . there to remain without bail or mainprize,[53] until he or they shall obey the said Writ." Furthermore, the offending officer must pay to the prisoner "a sum not exceeding One thousand Dollars, & not less than five hundred Dollars."

Section 12 broadens the penalties to include anyone who "with intent to avoid the effect of such Writ or Writs, shall transfer such Person or Persons to the custody of, or place him, her or them under the control of any other Person or Persons, or shall conceal him, her or them, or change the place of his, her, or their confinement, with intent to avoid the operation of such Writ or Writs." In this case, the penalty was a fine of "one Thousand Dollars, & may be imprisoned not less than one year, nor more than five years." Legally, "intent" does not necessarily mean just intended acts; intent can also include unintended consequences of intended acts.

Section 14 also imposes a penalty of "one thousand Dollars" on anyone who arrests or detains a prisoner for a crime after he or she has "been discharged by Order of the Municipal Court." The penalties in Sections 11, 12, and 14, are very harsh, showing the seriousness with which the Nauvoo City Council took the matter, even though I have found no evidence that these penalties were never employed.

The immediate effect of this ordinance was to reassure Joseph Smith that he could again engage in public life with considerable security. He returned to his home, attended a religious meeting on November 21, and presided as mayor at a public city council meeting on November 26.

Habeas corpus formed an important part of Joseph Smith's third arrest, with which he cooperated in the interests of getting a clear ruling on the extradition attempts from Missouri. In early December 1842, Jacob C. Davis, a state representative, urged the Illinois

[53]Mainprizes or mainpernors are defined as a writ directed to the sheriff, commanding him to take sureties for the prisoner's appearance and to let him go at large.

House of Representatives to repeal the Nauvoo Charter, while another representative recommended that the legislature repossess any state-owned arms lent to the Mormons.[54] William Smith, the Hancock County representative and brother to Joseph Smith, "made a spirited speech" to the House of Representatives on the issue of "preserv[ing] our charter." He raised an interesting point of precedent by arguing that, if the Nauvoo charter were repealed, "all the Charters in the State should [be], especially Springfield, Quincy & Chicago."[55]

While the state legislature was "in a high state of agitation," Joseph Smith sent a delegation to the newly elected governor, Thomas Ford.[56] Among the delegates were Hyrum Smith and Justin Butterfield, the U.S. district attorney who had advised Smith in the past and supporting the view that Reynolds's extradition order and Boggs's affidavit was deficient after Smith's first arrest attempt.[57] The delegation met with Governor Ford on December 14, 1842, for two purposes: first, to present an affidavit certifying that Smith was in Illinois on May 6, 1842, and consequently could not have attempted to assassinate Boggs, and second, to ask Ford to revoke Carlin's writ for Smith's arrest.

Ford replied that he believed Carlin's writ was illegal but doubted "his authority to interfere." Though Ford did not want to get personally involved, he promised to submit the problem to the judges of the Illinois Supreme Court and to abide by their decision.[58]

On December 26, 1842, Smith, believing Carlin's writ illegal, submitted to an arranged arrest by Wilson Law, a member of the

---

[54]*History of the Church*, 5:201. The state-owned arms were "three cannon, six-pounders, and a few score of muskets, swords, and pistols, which were furnished by the United States to Illinois, for the supply of her militia for common defense." Ibid. However, there is some evidence that the City of Nauvoo owned even more: "5 cannons, 460 pistols, 85 rifles, 500 muskets, 113 yagers (short-barreled but large-bore rifles), and 123 swords." Andrew F. Smith, *The Saintly Scoundrel: The Life and Times of Dr. John Cook Bennett* (Urbana: University of Illinois Press, 1997), 69–70.

[55]Jessee, *Papers of Joseph Smith*, 2:498.

[56]Ibid., 2:497.

[57]Ibid., 2:499–506.

[58]Ibid., 2:504–6.

Nauvoo City Council and a general in the Nauvoo Legion.[59] Law notified him that he must appear in the District Court in Springfield, the capital of Illinois. Smith sent Henry G. Sherwood, Nauvoo's sheriff and city alderman, and Smith's personal secretary, William Clayton, to Carthage to obtain a writ of habeas corpus issued by a non-Mormon. Law then released Smith into the custody of Willard Richards, an apostle and city alderman.[60]

Later that same day, Smith received Governor Ford's and the Supreme Court's opinions on the Missouri extradition order and writ. Ford basically repeated the same opinion he had given the delegation on December 14: The Supreme Court was "divided as to the propriety and justice of my interference with the acts of Governor Carlin." He therefore felt that Smith should "submit to the laws and have a judicial investigation of your rights."[61] Butterfield had spoken with the state Supreme Court justices and reported to Smith: "The judges were unanimously of the opinion that you would be entitled to your discharge under a habeas corpus to be issued by the Supreme Court, but felt some delicacy in advising Governor Ford to revoke the order issued by Governor Carlin." He further advised Smith to "come here

---

[59]*History of the Church*, 5:209.

[60]Ibid.

[61]Ibid. 5:205–6. Ford's letter, dated December 17 from Springfield, reads: "Your petition requesting me to rescind Governor Carlin's proclamation and recall the writ issued against you has been received and duly considered. I submitted your case and all the papers relating thereto to the judges of the Supreme Court, or at least to six of them who happened to be present. They were unanimous in the opinion that the requisition from Missouri was illegal and insufficient to cause your arrest, but were equally divided as to the propriety and justice of my interference with the acts of Governor Carlin. It being, therefore, a case of great doubt as to my power, and I not wishing, even in an official station, to assume the exercise of doubtful powers, and inasmuch as you have a sure and effectual remedy in the courts, I have decided to decline interfering. I can only advise that you submit to the laws and have a judicial investigation of your rights. If it should become necessary, for this purpose, to repair to Springfield, I do not believe that there will be any disposition to use illegal violence towards you; and I would feel it my duty in your case, as in the case of any other person, to protect you with any necessary amount of force from mob violence whilst asserting your rights before the courts, going to and returning."

without delay" and assured him he would "stand by you, and see you safely delivered from your arrest."[62] Smith also received a short letter from Justice James Adams of the Illinois Supreme Court, corroborating Butterfield's summary: "I will say that it appears to my judgment that you had best make no delay in coming before the court at this place for a discharge under a habeas corpus."[63]

Finding these letters "highly satisfactory," Smith set out for Springfield on December 27, 1842, with a small party.[64] On December 31 in Springfield, Smith asked Ford to issue a new writ, based on the Missouri order, for his arrest and trial. Smith was then re-arrested. Smith's attorney, Justin Butterfield, then petitioned Judge Nathaniel Pope, of the U.S. District Court for Illinois for a writ of habeas corpus. Judge Pope issued the writ and set a hearing for January 2, 1842.

On January 2, Josiah Lamborn, the state attorney general, asked for a continuance of two days on the grounds of being unprepared. Pope granted this request.[65] On January 4, Lamborn asked that the proceedings be dismissed on the grounds that the district court did not have jurisdiction: "1. The arrest and the detention of Smith was not under or by color of authority of the United States, or of any officer of the United States, but under and by color of authority of the State of Illinois, by the officers of Illinois. 2. When a fugitive from justice is arrested by authority of the Governor of any State upon the requisition of the Governor of another State, the courts of justice, neither State nor Federal, have any authority or jurisdiction to enquire into any facts behind the writ."[66] Thus, he felt the state courts, not the federal court, was the correct venue for hearing the case; even if the case proceeded in the district court, it could only examine whether correct procedures had been followed, not whether the underlying facts justified acquittal or dismissal.

Butterfield countered by claiming that district court indeed had jurisdiction because the "constitution and laws of the United States

---

[62]Justin Butterfield, Letter to Joseph Smith, December 17, 1842, *History of the Church*, 5:206.

[63]Ibid., 5:206.

[64]Bushman, *Joseph Smith: Rough Stone Rolling*, 479.

[65]*History of the Church*, 5:216.

[66]"Circuit court of the U. States for the District of Illinois," *Times and Seasons* 4, no. 5 (January 16, 1843): 66.

regulat[e] the surrender of fugitives from justice."[67] Further, "the whole power in relation to the delivering up of fugitives from justice and labor has been delegated to the United States, and Congress has regulated the manner and form in which it shall be exercised. The power is exclusive. The State Legislatures have no right to interfere; and if they do, their acts are void."[68] Thus, because Smith was being pursued as a fugitive, he was "confined under or by color of authority of the United States."[69]

Second, Butterfield argued that, at the return of the writ of habeas corpus, the court must "look into the depositions before the magistrate; and though the commitment be full and in form, yet, if the testimony prove no crime, the court will discharge ex-parte." What this means is, if an individual who was arrested by a warrant is brought before a court with a writ of habeas corpus, the court may look into the facts behind the warrant even if the form is correct. He also claimed that the original Boggs affidavit "does not show that Smith was charged with any crime committed by him in Mo., nor that he was a fugitive from justice." Butterfield concluded this argument claiming that "if the commitment be for a matter for which by law the prisoner is not liable to be punished, the court must discharge him." Further, "the executive of [Illinois] has no jurisdiction over the person of Smith to transport him to Missouri, unless he has fled from that state."[70]

Third, Butterfield argued that "the prisoner has a right to prove facts not repugnant to the return, and even to go behind the return and contradict it, unless committed under a judgment of a court of competent jurisdiction"; and "the testimony introduced by Smith at the hearing, showing conclusively that he was not a fugitive from justice, is not repugnant to the return."[71] This means that Smith was well within his rights to provide evidence or "go behind the return," and prove the facts that the warrant or extradition was based on are incorrect.

---

[67]Ibid. Butterfield cited "2nd sec., 4th article Constitution of the United States, 1st sec. of the Act of Congress of 12th Feb., 1793."

[68]Ibid. Butterfield cited "2nd and 3rd clause of 2nd sec., 4th article Constitution United States, 2nd vol. Laws United States 331—16 Peters, 617, 618, 623; 4th Wheaton's Reports, 122, 193-12; Wendall, 312."

[69]Ibid. Butterfield cited "Act of Congress of Sept. 24th, 1789, sec. 14; 2nd Condensed 33; 3rd Cranch, 447; 3rd Peters, 193."

[70]Ibid., 66-67.

[71]Ibid., 67.

Finally, Butterfield argued that the original arrest warrant from Missouri was based on lies. In his closing arguments, he appealed to the emotions of all present: "I do not think the defendant ought, under any circumstances, to be given up to Missouri. It is a matter of history that he and his people have been murdered or driven from the state. If he goes there, it is only to be murdered, and he had better be sent to the gallows. He is an innocent and unoffending man. If there is a difference between him and other men, it is that this people believe in prophecy, and others do not."[72] The court then adjourned so that Pope could formulate his opinion.

On January 5, Pope issued his opinion. He confirmed the "importance of this case," since it "affect[s] the lives and liberties of [Illinois] citizens." He framed the issue before the court as a "question arising under the Constitution and laws of the United States whether a citizen of the state of Illinois can be transported from his own state to the state of Missouri, to be there tried for a crime, which, if he ever committed, was committed in the state of Illinois; whether he can be transported to Missouri, as a fugitive from justice, when he has never fled from that state."[73]

Pope first responded to Lamborn's case—that jurisdiction was improper. Pope stated, "Because the warrant was not issued under color or by authority of the United States, but by the state of Illinois" and "because no habeas corpus can issue in this case from either the Federal or State Courts to inquire into facts behind the writ." On the first point, he held that, when fugitives were returned to another state, it was done pursuant to an "act of Congress." Further, he held that this act does not "confer any additional power upon the executive of this state . . . but to make it the duty of the executive to obey and carry into effect the act of Congress." He then found that, because the warrant was "issued in pursuance of the Constitution and laws of the United States," his federal court did, in fact, have jurisdiction.[74]

Pope then recounted the history of habeas corpus, calling it "indeed a magnificent achievement over arbitrary power." He found it did not matter who issued a warrant—whether a king, governor, or a

---

[72]Scott H. Faulring, ed., *An American Prophet's Record: The Diaries and Journals of Joseph Smith* (Salt Lake City: Signature Books, 1989), 277.

[73]"Circuit Court of the U. States for the District of Illinois," *Times and Seasons* 4, no. 5 (January 16, 1843): 66.

[74]Ibid., 67–68.

lowly official—"this munificent writ, wielded by an independent judge, reaches all."[75]

Pope then addressed Butterfield's claims, agreeing that the warrant for Joseph Smith's arrest was improper:

> The [Boggs] affidavit being thus verified, furnished the only evidence upon which the Governor of Illinois could act. Smith presented affidavits proving that he was not in Missouri at the date of the shooting of Boggs. This testimony was objected to by the Attorney General of Illinois, on the ground that the Court could not look behind the return. The court deems it unnecessary to decide that point, inasmuch as it thinks Smith entitled to his discharge for defect in the affidavit. To authorize the arrest in this case the affidavit should have stated distinctly, 1st That Smith had committed a crime. 2d, That he committed it in Missouri.
>
> It must appear that he fled from Missouri to authorize the Governor of Missouri to demand him, as none other than the Governor of the State from which he fled can make the demand. He could not have fled from justice, unless he committed a crime, which does not appear. It must appear that the crime was committed in Missouri to warrant the Governor of Illinois in ordering him to be sent to Missouri for trial. The 2d section, 4th article, declares he "shall be removed to the State having jurisdiction of the crime." . . .
>
> Mr. Boggs having the "evidence and information in his possession, should have incorporated it in the affidavit to enable the Court to judge of their sufficiency to support his belief." Again, he swears to a legal conclusion when he says that Smith was accessary before the fact. What acts constitute a man [being] an accessary in a question of law are not always of easy solution. Mr. Boggs' opinion then, is not authority. He should have given the facts. He should have shown that they were committed in Missouri, to enable the court to test them by the laws of Missouri, to see if they amounted to a crime. Again, the affidavit is fatally defective in this, that Boggs swears to his belief. . . .
>
> Again, Boggs was shot on the 6th of May. The affidavit was made on the 20th of July following. Here was time for enquiry, which would confirm into certainty or dissipate his suspicions. He had time to collect facts to be had before a grand jury or be incorporated in his affidavit. The court is bound to assume that this would have been the course of Mr. Boggs, but that his suspicions were light and unsatisfactory. The affidavit is insufficient, 1st, Because it is not positive. 2, Because it charged no crime. 3, It charges no crime committed in the State of Missouri. Therefore he did not flee from the justice of the State of Mis-

[75]Ibid., 68.

souri, nor has he taken refuge in the State of Illinois.[76]

Pope then concluded by ordering "that Smith be discharged from his arrest." Joseph Smith and his followers returned to Nauvoo in triumph.

*June 29, 1843: Fifth Ordinance*

In June 1843, Governor Thomas Ford issued a new writ based on a new requisition from Thomas Reynolds, governor of Missouri, for Smith's arrest.[77] At this time, Smith was preaching in Dixon, Illinois, north of Nauvoo. Joseph H. Reynolds, sheriff of Jackson County, Missouri, and Constable Harmon T. Wilson, of Carthage, Illinois, went to Dixon and presented themselves as Mormon elders who wanted to see Smith.[78] When they arrested him. Smith claimed that he had not been served with process, meaning he had not been served with a warrant and asked, "Gentlemen, if you have any legal process, I wish to obtain a writ of habeas corpus," to which he was answered, "G— d— you, you shan't have one." After hearing this, Smith yelled to a passerby, "These men are kidnapping me, and I wish a writ of habeas corpus to deliver myself out of their hands."[79] He believed that the officers intended to rush him into Missouri, thus preventing him from obtaining a writ of habeas corpus. It was his fourth arrest over unfinished Missouri business.

The two law officers took Smith to an inn, where he was allowed to receive visitors, a Mr. Patrick and a Mr. Southwick, both apparently non-Mormons. At Smith's urgent plea, they immediately went to a local master-in-chancery, asking for a writ of habeas corpus.[80] They also complained to a constable that the officers threatened to kill Smith. The constable then arrested Reynolds and Wilson. The following day, June 24, the master-in-chancery arrived with the writ of habeas corpus, which was returnable before the Judge John D. Caton of the Ninth Judicial Circuit at Ottawa, Lee County, a community sixty miles south of Dixon. This writ, served on Reynolds and Wilson, blocked

---

[76]Ibid., 69-71.

[77]Justice James Adams of the Illinois Supreme Court alerted Smith to this fact in a letter written on June 16, 1843. *History of the Church*, 5:433.

[78]Firmage and Mangrum, *Zion in the Courts*, 101.

[79]"Missouri v. Joseph Smith," *Times and Seasons* 4, no. 16 (July 1, 1843): 242.

[80]Ibid., 243.

their plan of carrying Smith to Missouri.[81]

Smith, who was without a lawyer, saw Cyrus Walker, who was in Dixon and was running for Illinois Congressman. Smith asked Walk- er to represent him, but Walker bargained. "He could not find time to be my lawyer unless I could promise him my vote." Smith, considering him the "greatest criminal lawyer in that part of Illinois," promised him his vote. Walker complacently stated, "I am now sure of my election, as Joseph Smith has promised me his vote, and I am going to defend him."[82]

Within hours later, the circuit court of Lee County charged Reynolds and Wilson with "private damage" and "false imprisonment," setting bail at the exorbitant sum of $10,000.[83] Ironically, it was their turn to seek a writ of habeas corpus, for the purpose of being discharged before Judge Caton.[84] It took until June 25 for Smith's attorney to realize that the judge was out of the state. The whole party, including Reynolds and Harmon, went to Nauvoo, which they reach- ed on June 30. To no one's surprise, the Nauvoo Municipal Court discharged him on the writ of habeas corpus.

Even before Joseph Smith and his growing band of mounted supporters reached Nauvoo, the city council again passed an ordinance, its fifth, to protect Joseph Smith from arrest. It did not deal with habeas corpus but gave "the city council, marshal, constables, and city watch," authority to "require all strangers who shall be entering this city, or are already tarrying, or may hereafter be tarrying in said city in a civil and respectful manner to give their names, former residence, for what intent they have entered or are tarrying in the city, and answer such other questions as the officer shall deem proper or necessary."[85] This ordinance further protected Smith, in that officers like Reynolds and Wilson would not be able to approach Smith while he was in Nauvoo, because, using this ordinance, law officers could stop all strangers as potential disease-carriers.[86]

---

[81]Ibid.

[82]*History of the Church*, 5:444.

[83]Ibid.

[84]Ibid.

[85]Nauvoo City Council, Minutes, June 29, 1843.

[86]The purpose of this ordinance was not to prevent contagious disease in Nauvoo, but rather to keep people from arresting Joseph Smith. On

*December 8, 1843: Sixth Ordinance*

On December 8, 1843, the city council went into special session. On the agenda was one item: preparation "for any invasion from Missouri."[87] On December 2, Mormons Daniel Avery and his son from Bear Creek, Hancock County, were kidnapped by a party of Missourians and taken to Missouri. Avery later made a detailed affidavit: "Colonel [Levi] Williams held his bowie-knife to his breast. Six of the others stood with their pistols cocked and their fingers upon the triggers, muzzles presented at his body, ready to fire; and two stood with clubs, and amidst the most horrid oaths and imprecations, took and bound with silk handkerchiefs your said affiant, and led him away between two men, one holding a savage bowie-knife on one side, and the other a cocked pistol on the other side." After being forced to walk for about a mile, he was tied on a horse and the journey resumed.

> I now called for a trial, as I had told them all the way that I never resisted legal authority. . . . They forced me into a skiff and bound me, and five men put me across. . . . They landed at the tavern on the south side of the Des Moines [River]. . . About noon they got ready and started with me, guarded upon a horse, for McCoy's in Clark county, Missouri, about twelve miles distant. . . .
>
> At Waterloo I was examined by a magistrate, who committed

---

Friday June 23, the *History of the Church* describes Joseph's arrest and the need for this ordinance: "I sent William Clayton to Dixon at ten a.m., to try and find out what was going on there. He met Mr. Joseph H. Reynolds, the sheriff of Jackson county, Missouri, and Constable Harmon T. Wilson, of Carthage, Illinois, about half way, but they being disguised, they were not known by him. . . . They arrived at Mr. Wasson's while the family were at dinner, about two p.m. They came to the door and said they were Mormon elders, and wanted to see Brother Joseph. . . . They then hurried me off, put me in a wagon without serving any process, and were for hurrying me off without letting me see or bid farewell to my family or friends, or even allowing me time to get my hat or clothes, or even suffer my wife or children to bring them to me." *History of the Church,* 5:439–41. Four days later, the Prophet's journal reported that other strangers in Nauvoo that caused him alarm: "Tuesday, June 27th Reported to be many strangers in the city. Watch doubled in the city this night." He repeated on Wednesday: "Some anxiety about so many strangers and suspicious characters in this city. New ordinance proposed by some Alderman." Faulring, *An American Prophet's Record,* 288.

[87]Faulring, *An American Prophet's Record,* 431.

> me upon the substance of an affidavit made by my son in duress with a bowie-knife at his breast, and upon a promise that he should be liberated from Monticello jail, [Lewis County, Missouri] where he was confined after being kidnapped some three or four weeks previous.

Avery was unable to post the bail of $1,000. He was transported to Monticello chained to his horse and passed the night in chains. "The court concluded to let me to bail under bonds of $1000, but this I could not obtain. Subsequently it was reduced to $500, but all in vain, for I was unaquainted [sic] with the people."[88] Two days later, Avery sued for a writ of habeas corpus and made his way back to Nauvoo on foot, arriving two days before Christmas.[89]

The Saints in Nauvoo were horrified by the kidnapping, realizing that the same fate could befall Smith. Six days after Avery's capture, the city council thus passed a "Special Ordinance in the Prophet's Case, vs. Missouri." This ordinance stated in part: "If any person or persons shall come with process, demand, or requisition, founded upon the aforesaid Missouri difficulties, to arrest said Joseph Smith, he or they so offending shall be subject to be arrested by any officer of the city, with or without process, and tried by the Municipal Court, upon testimony, and, if found guilty, sentenced to imprisonment in the city prison for life: which convict or convicts can only be pardoned by the Governor, with the consent of the Mayor of said city."[90] The ordinance, which claims powers beyond those granted to Nauvoo by its city charter, showed the city council's and Joseph Smith's fear and frustration in matters dealing with Missouri. A life sentence for serving process is, in fact, so harsh that it seems impossible that any court would uphold such a sentence on appeal. On February 12, 1844, without giving a reason, the city council repealed this sixth ordinance, apparently deciding to rely on habeas corpus to protect Smith.

Three months later on May 6, 1844, Joseph Smith was involved in a civil case, in which he again used a writ of habeas corpus. Francis M. Higbee sued Smith for $5,000 in damages but failed to state what

---

[88]*History of the Church*, 6:146–48.

[89]Ibid., 6:142.

[90]Nauvoo City Council, Minutes, December 8, 1843.

he accused Smith of in the warrant for Smith's arrest.[91] On May 8, Smith petitioned the Nauvoo Municipal Court for a writ of habeas corpus, even though the warrant had been issued by the circuit court at Carthage, Illinois.[92] Before the municipal court, Smith claimed that "the proceedings against him are illegal; that the said warrant of arrest is informal, and not of that character which the law recognizes as valid; that the said writ is wanting and deficient in the plea therein contained; that the charge or complaint which your petitioner is therein required to answer is not known to the law." Also, he claimed that the suit was "instituted against him without any just or legal cause; and further that the said Francis M. Higbee is actuated by no other motive than a desire to persecute and harass."[93]

The case was argued before the municipal court with Smith represented by George P. Styles and Sidney Rigdon. Smith called eight witnesses who testified to "(1) the very bad and immoral character of Francis M. Higbee; and (2) the maliciousness of his prosecution of Joseph Smith."[94] The court, after hearing Smith's evidence, discharged him from the arrest, found the suit malicious, and ordered Higbee to pay the court costs: $36.26½.[95]

With the successful use of the writ of habeas corpus in a civil case, it seemed that Smith was totally immune from any proceeding against him. In criminal cases, with warrants issued from Illinois and Missouri and from civil cases, Smith continually evaded authorities with the writ of habeas corpus.

## NON-MORMON REACTION TO NAUVOO'S HABEAS CORPUS ACTS

Nauvoo's series of habeas corpus acts caused outrage among non-Mormons and dissident Mormons, and they expressed their anger in many area newspapers and in attempts to repeal the Nauvoo Charter. Their outrage at what they saw as the circumvention of American law was also one of the central themes of the anti-Mormon paper printed in Nauvoo on June 7, 1844, the *Nauvoo Expositor*. The

---

[91]Faulring, *An American Prophet's Record*, 477.

[92]*History of the Church*, 6:357.

[93]Ibid., 6:358.

[94]Ibid., 6:360. The eight witnesses were Brigham Young, Sidney Rigdon, Hyrum Smith, Orrin Porter Rockwell, Cyrus H. Wheelock, Joel S. Miles, Henry G. Sherwood, and Heber C. Kimball.

[95]Ibid., 6:427.

last paragraph in its first (and only) issue called for the repeal of the Nauvoo charter, mainly because of the perceived abuse of habeas corpus:

> The people of the State of Illinois will, consequently, see the necessity of repealing the charter of Nauvoo, when such abuses are practiced under it; and by virtue of said chartered authority, the right of the writ of Habeas Corpus in all cases arising under the city ordinance, to give full scope to the desired jurisdiction. The city council have passed ordinances, giving the Municipal court authority to issue the writ of Habeas Corpus in all cases when the prisoner is held in custody in Nauvoo, no matter whether the offender is committed in the State of Maine, or on the continent of Europe, the prisoner being in the city under arrest. It is gravely contended by the legal luminaries of Nauvoo, that the ordinances give them jurisdiction, not only jurisdiction to try the validity of the writ, but to enquire into the merits of the case, and allow the prisoner to swear himself clear of the charges.[96]

Other regional newspapers had similar reactions. The *Iowa City Standard* in reference to habeas corpus stated, "Much feeling exists upon the subject of the extraordinary powers granted to the Mormons; and a strong effort is on foot to bring about a repeal of the Nauvoo Charter."[97] The paper also reported on the repeal of the December 6, 1843, ordinance to protect Joseph Smith, claiming that the repeal was due to "strong vindictive feelings . . . excited against the Mormons." It reflected that the public opposition "will force them to be more bearable in the future, or result in their expulsion."[98]

The *Bloomington Herald*, a Missouri newspaper, also criticized Smith's ability to evade the law: "We learn that Joe Smith was lately indicted in some of the upper counties in this State for treason and murder, growing out of the Mormon war. Immediately thereafter a writ was issued and . . . [w]e are told that Smith has left for parts unknown, or at least keeps himself so concealed that he cannot be arrested."[99] This article did not comment on Smith's use of habeas corpus; but just a few days before Smith's death, the *Bloomington Herald* published its criticism of the Nauvoo habeas corpus acts:

---

[96]*Nauvoo Expositor* 1, no. 1 (June 7, 1844): 3.

[97]"Illinois," *Iowa City Standard* 3, no. 4 (December 29, 1842): 2.

[98]*Iowa City Standard* 4, no. 14 (April 4, 1844): 2.

[99]"Joe Smith," *Bloomington Herald* 3, no. 35 (June 30, 1843): 2.

> Its charter confers upon the Mayor power to grant, hear, &c. decide upon writs of habeas corpus, under which many criminals arrested for offenses against the laws of the States were set at liberty. Recently, Jeremiah Smith, charged with having obtained money from the Treasury of the United States under false pretences, fled the Territory, joined the Mormons, and sought the protection of the Prophet. By him he was kept concealed, but produced under such restraints as prohibited the officers from taking him from within his jurisdiction for trial. Service was made upon the refuge, and upon trial, released under the writ of habeas corpus.[100]

The *Davenport Gazette* also reported that Smith obtained "a writ of habeas corpus, in the Boggs' case, [and] the trial resulted in his discharge."[101] This same paper sneered that Smith was "protected by that immaculate body the Nauvoo Municipal Court."[102] It reported a meeting in September 1843 in which citizens of Carthage met and passed resolutions about the "Mormon problem." One of the resolutions stated that the Mormons "are unwilling to submit to the ordinary restraints of the law; we are therefore forced to the conclusion that the time is not far distant, when the citizens of this country will be compelled to assert their rights in some way."[103] The *Gazette* also sarcastically reported the passage of Nauvoo's sixth habeas corpus act on December 8, 1843, an admittedly extreme measure:

> The Mormons have recently, held a meeting at Nauvoo, at which they resolved that "Joe Smith" is not guilty of any charge made against him by the State of Missouri. The city authorities have passed an ordinance, directing the imprisonment for life, of any person who shall come within the corporate limits of Nauvoo, with a legal process for the arrest of Joe Smith, for an offense committed by him in this State during the Mormon difficulties. The prophet Joe . . . also considers it

---

[100]"Mormons–Trouble at Nauvoo," *Bloomington Herald* 4, no. 33 (June 21, 1844): 2. See also *History of the Church*, 6:343, where Joseph Smith directs Willard Richards to assist Jeremiah Smith in obtaining a writ of habeas corpus because he was "expecting to be arrested by the U.S. Marshall for getting money which was due him." The Municipal Court of Nauvoo heard testimony on Jeremiah Smith's case. Ibid., 6:418–22.

[101]"Mormonism," *Davenport Gazette* 2, no. 22 (January 19, 1843): 2.

[102]"Joe Smith," *Davenport Gazette* 2, no. 52 (August 17, 1843): 3.

[103]"Anti-Mormon Meeting," *Davenport Gazette* 3, no. 5 (September 21, 1843): 3.

his duty, as Lieut. General of the Nauvoo Legion and of Militia of Illinois, to enforce said ordinance.[104]

A few weeks later, the *Gazette* reported that the people of Carthage "denounce Joe Smith 'as the most foul-mouthed blackguard that was ever commissioned by Satan to vex and torment the children of men,' and repeating the grievances which they have suffered, declared that there is no alternative now left but . . . to repel every indignity or oppression offered by the Mormons, at the point of bayonet."[105]

Though the newspaper reports were not always correct or fair, they did communicate the frustration of Nauvoo's Gentile neighbors in Illinois and their belief that Smith had positioned himself above the law. That frustration drove Smith's assassination on June 27, 1844, at Carthage. Though his murder was not committed specifically because of the habeas corpus acts, those acts contributed directly to the bad feelings between the two groups in Illinois.

## THE *NAUVOO EXPOSITOR* AND THE FINAL WRIT

On June 7, 1844, eight disaffected members—Sylvester Emmons, Wilson Law, William Law, Charles Ivins, Francis M. Higbee, Chauncey L. Higbee, Robert D. Foster, and Charles A. Foster—published the first issue of the *Nauvoo Expositor*. Its prospectus stated that its purpose was "to advocate, through the columns of the Expositor, the UNCONDITIONAL REPEAL OF THE NAUVOO CITY CHARTER." After the first issue was put into circulation, the city council passed an ordinance authorizing the abatement of public nuisances, then declared the press to be such a nuisance, and authorized the mayor (Joseph Smith) to order its abatement. He gave the order to John P. Greene, the city marshal, who carried out these instructions—throwing the type and supplies into the street and burning the office furniture.

When the owners complained, David Bettisworth, a constable for Hancock County, arrested Smith, but he again invoked a writ of habeas corpus, allowing him to be tried in Nauvoo where the municipal court, presided over by George W. Harris acquitted him. After public outrage throughout Illinois, Daniel H. Wells, a non-Mormon

---

[104]"The Mormons," *Davenport Gazette* 3, no. 23 (January 25, 1844): 2.

[105]"Joe Smith," *Davenport Gazette* 3, no. 26 (February 15, 1844): 2.

(although pro-Mormon) Justice of the Peace retried Smith on June 17 in the Justice Court of Hancock County. Smith was tried for causing

> a riot committed in the city of Nauvoo, county aforesaid, on or before the 10th day of June, 1844, by forcibly entering a brick building in said city, occupied as a printing office and taking therefrom by force, and with force of arms, a printing-press, types and paper, together with other property, belonging to William Law, Wilson Law, Robert D. Foster, Charles A. Foster, Francis M. Higbee, Chauncey L. Higbee and Charles Ivins, and breaking in pieces and burning the same in the streets.[106]

He was again acquitted. Smith submitted the following defense at his second trial:

> Joseph Smith objected to calling in question the doings of the City Council, and referred to the proceedings of Congress to show that all legislative bodies have a right to speak freely on any subject before them, . . . that the execution of such order could not be a riot, but a legal transaction; that the doings of the City Council could only be called in question by the powers above them, and that a magistrate had not that power; that the City Council was not arraigned here for trial, but individuals were arraigned for a riot. If the City Council had transcended their powers, they were amenable to the Supreme Court.[107]

Wells accepted this defense, which outraged non-Mormons in surrounding areas and throughout the Illinois generally, who saw the destruction of the *Expositor* as an attack on freedom of the press. Governor Ford went to Carthage to diffuse the tensions and demanded that Smith come to Carthage to be tried again, this time by the circuit court.

After briefly contemplating fleeing out of the state, on June 24, 1844, Smith left for Carthage with Hyrum Smith, John Taylor, Porter Rockwell, W. W. Phelps, Willard Richards, and thirteen members of the city council. At Carthage, he submitted to arrest. He and Hyrum were put in the Carthage Jail, as the safest place for them. Other members of the party were not charged; some returned to Nauvoo while others stayed with the Smith brothers and other supporters came and went over the next three days. In the late afternoon of June 27, after

---

[106]*History of the Church*, 6:488.

[107]Ibid., 6:489.

Governor Ford left Carthage, a mob of men stormed the jail and attacked the four Mormon men in it: Joseph and Hyrum Smith, John Taylor, and Willard Richards. Joseph and Hyrum were killed, Taylor was severely wounded but survived, and Richards received only a flesh wound.

## CONCLUSION

Joseph Smith was murdered for many reasons, both religious and political. However, receiving only rare attention are the Nauvoo habeas corpus acts, which infuriated non-Mormon neighbors and dissidents, contributed to the general feelings of ill will toward the Mormons, and heightened the tensions that led to the Smith brothers' deaths. Though the effects of the acts ultimately changed Mormonism forever, they also have a place in legal American history. Whether the Mormons were motivated by self-serving reasons, indignation at what they perceived as the lack of justice for them as a religious minority, or even a love of justice, these habeas corpus acts became the most expansive ever passed in either the American and British legal system.